IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

TUESDAY, THE 29TH MAY 2007 / 8TH JYAISHTA 1929

WP(C).No. 9418 of 2007(U)

PETITIONER:

K.A.THOMAS, AGED 49 YEARS,
S/O.ABRAHAM, KALLARACKAL HOUSE, CHENGALAM POST,
PONKUNNAM, KOTTAYAM, KERALA.

BY ADV. SRI.V.PHILIP MATHEW

RESPONDENTS:

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1. UNION OF INDIA, REPRESENTED BY THE
SECRETARY, MINISTRY OF LAW AND JUSTICE,
NEW DELHI.

2. THE SECRETARY,
MINISTRY OF HOME, UNION OF INDIA,
SOUTH BLOCK, NEW DELHI.

3. NABEESA BEEVI, MADATHANIL HOUSE,
ERUMELI, NOW RESIDING AT VARIKKAPLACKAL HOUSE,
CHURULICODE, PATHANAMTHITTA.

4. STATE OF KERALA,
REPRESENTED BY CHIEF SECRETARY,
KERALA GOVERNMENT SECRETARIAT,
THIRUVANANTHAPURAM.

R4 BY GOVT. PLEADER SRI. C.K.SURESH

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 29/05/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

R. BASANT, J.

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W.P.C.No. 9418 of 2007 U

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Dated this the 29th day of May, 2007

JUDGMENT

The petitioner is the accused in a prosecution under Section 138 of the N.I. Act. The prosecution was initiated long earlier. The verdict of guilty, conviction and sentence have at last become final with the order dt. 19.6.06 passed by this Court in revision. The petitioner was sentenced to pay a fine of Rs.3,55,000/- and in default to undergo S.I. for a period of three months. An amount of Rs.3,45,000/- was directed to be released to the complainant under Section 357(1) Cr.P.C. The petitioner was specifically directed to appear before the learned Magistrate on 11.9.2006 to receive the default sentence, if the fine amount is not paid by then.

2. The petitioner has not so far appeared before the learned Magistrate. He has not so far paid any part of the amount as fine. The petitioner, in turn, made frantic efforts to protract the proceedings by making an application for commutation/pardon of the sentence imposed. The said application was not considered favourably by the Govt. of India and the petitioner was directed to

approach the High Court to seek appropriate reliefs. That petition was forwarded to the High Court for consideration and disposal. This Court informed the petitioner that no orders on the administrative side could be passed. The petitioner, in these circumstances, has come to this Court with this writ petition on 19.3.2007 to complain about the inaction on the part of the Government.

3. The learned counsel for the petitioner submits that there is abdication of jurisdiction on the part of the Union of India in not considering the application for commutation/pardon in an appropriate manner. I shall for the purpose of arguments accept that the petition has not been properly disposed of. But I must say that in the facts and circumstances of this case I am not at all persuaded to agree that this is a fit case, even assuming that there is no proper disposal of the application, for this court to invoke the extra ordinary constitutional jurisdiction under Article 226/227 of the Constitution. This evidently is a case where the petitioner is attempting in an unworthy manner to prolong and protract the proceedings and to avoid the liability to pay the amount to the complainant, who has been compelled to fight three rounds of legal battle by now. I am, in these circumstances, not issuing notice to the respondent/complainant.

4. The learned counsel for the petitioner finally submits that he is making attempts to settle the matter and to deposit the amount of compensation. The counsel has with him a Demand Draft for Rs.1,47,000/- and he prays that he may be permitted to remit the amount. To remit the amount no permission of this Court is required and the petitioner either personally or through counsel can certainly pay the amount of fine before the learned Magistrate. Even if only part of the amount is paid, the learned Magistrate shall receive the same and release the same to the complainant. I am of the opinion that the petitioner is not entitled for any relief. The petitioner must pay the amount or appear before the learned Magistrate to undergo the default sentence, as already directed. There is a prayer for extension of time for payment. I find no reason to extend the time also.

5. This Writ Petition is accordingly dismissed.

(R. BASANT)
Judge

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